IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELALTE JURISDICTION

FIRST APPEAL NO. 224 OF 1993

Union of India, represented by
the General Managers of
Central Railways, Bombay V.T.
and the South Eastern Railway,
Calcutta. .. Appellants
Original Defts.

V/s

M/s Sachalal Nandram,
a registered Firm, carrying
on business at Nanduri, Lasalgaon
and Pimpalgaon,Dist. Nasik,
through its partner Shri
Premsukh Nandram Bhandari,
R/o Lasalgaon, Dist. Nasik. ..Respondents
Original Plaintiffs.

Mr. A.N. Sawant for the appellants
Mr. R.Y. Govilkar for the respondents.

CORAM : ANOOP V.MOHTA J.
DATE : 14TH DECEMBER, 2005.

ORAL JUDGMENT

. This appeal is filed by the original-defendants and thereby challenged the order passed by the Railway Claim Tribunal, Bombay dated 1st December, 1992, whereby, the appellant-respondents have been ordered to pay Rs.10,943 to the palintiff-respondents with interest at the rate of 12% per annum from the date of the suit

till realisation and proportionate cost.

2. Heard the learned Counsel appearing for the Counsel. In view of the judgment delivered by this Court in **(Union of India V. M/s Eknath Khemchand) First Appeal No. 1136 of 1992**, dated 6th May, 2005 (D.G. Deshpande, J.)

In view of this both the parties conceded that the liability in this matter will be of the General Manager, Central Railway, Bombay and not of South Eastern Railway.

3. The parties led evidence in this matter and the learned Tribunal held that the respondents-plaintiffs proved that the vagaon supplied to them was not, as per the norms and the delay in transport was caused by the appellant. Due to negligence and misconduct, therefore, the plaintiff-respondents suffered loss of Rs. 10,943. This is a case as alleged of damage of 441 bags of onion, which
were booked by the respondents-plaintiffs on 9/10/1986. The goods were delivered after 22 days. By that time all the onions were badly damaged. Therefore, notices were issued and claim was made of Rs.41,600.81, with

future interest. As matter could not be settled, the present suit was filed and after establishment of Recovery Claim Tribunal, it was thereafter tried by the Tribunal. Parties have filed their affidavits in support of their respective cases. There is no counter appeal filed by the respondents/plaintiffs. The Tribunal therefore, on the basis of assessment certificate issued by the authorities, arrived at the figures, and granted, considering the existed rates, based on the material evidence on the record, I see there is no reason to interfere with the order, as passed by the Tribunal of awarding damages. There is no perversity in the facts and circumstances of the case. I am not inclined to interfere with the findings given by the learned Tribunal. The figures as arrived based on the value of Rs. 56.35 per bag, multiplied by 193.2 bags and the figure rounded of Rs. 10,868 appears to be just and proper.

4. Taking all this into account, the grant of interest at the rate of 12% per annum as awarded, in my view, appears at higher side. Therefore, as conceded by the respondents also, the rate of interest is reduced to 9% per annum from the date of filing of the application

till realisation.

5. Therefore, the first appeal is partly allowed.

. The appellants/defendants ordered to pay Rs. 10,943/- with interest at the rate of 9% per annum from the date of the suit till realisation. Any amount, if in excess recovered by the respondents shall be refunded to the appellant. The liability in this matter, as agreed has been conceded shall be the Central Railway, Bombay and not of South Eastern Railway. No order as to cost.

[ANOOP V. MOHTA, J.]